

VERDICTUM.IN

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). 2474/2023

MASTER ARAKH

APPELLANT(S)

VERSUS

STATE OF UTTAR PRADESH

RESPONDENT(S)

O R D E R

1. Heard the learned counsel appearing for the parties.
2. The appellant along with other accused have been convicted for the offences punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 (for short, the "IPC") and have been sentenced to undergo life imprisonment. The judgment of the Sessions Court has been confirmed by the High Court. After the present Appeal was filed, a contention was raised by the appellant that on the date of commission of the offence, he was a juvenile in conflict with law. On the basis of the said contention, by an order dated 24th August, 2022, a report of the Juvenile Justice Board was called by this Court. After making an inquiry, the Juvenile Justice Board came to a conclusion that on 6th July, 1994, which is the date of the incident, the age of the appellant was 18 years 10 months and 27 days.
3. The submission of the learned counsel appearing for the appellant is that the investigation took 12 years and the charge sheet was filed 12 years after the date of the incident. His

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second submission is that though the case of the prosecution is that the appellant used a fire arm and the deceased, who is the brother of PW-1 (Shivdev Mishra) and PW-1 received bullet injuries, there is no recovery of any weapon. He submitted that within a few minutes after the incident, the body of the deceased disappeared and was found after a gap of two days. He pointed out that the body of the deceased was found at some other place in water. He further submitted that there were no blood marks found at the scene of the offence. He, therefore, submitted that the prosecution has failed to bring home the guilt of the appellant.

4. In the present case, PW-1, the brother of the deceased, is the only eyewitness. We have perused his evidence. He had clearly stated that the appellant and three accused around 8:30 p.m on 6th July, 1994 fired at his brother (deceased). He himself received bullet injuries. He received bullet injuries when he turned back and tried to run away.

5. After he ran for about 10 to 15 minutes, after hearing the shouts, people came with flashing torches. When PW-1 along with the other people went back to the spot of the incident, he did not find the dead body of his brother. PW-1 stated that he did not see whether there was blood spilled on the spot or not.

6. After having carefully perused the examination-in-chief and the cross-examination of the PW-1, we find that not a single material contradiction or omission is brought on record. In the cross-examination, PW-1 reiterated that even his deceased brother

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flashed the torch after seeing the accused and he recognised the accused in the torch light. He also reiterated that he knew all the accused before the incident.

7. According to us, the evidence of PW-1 is of sterling quality as it has not shaken in the cross-examination at all.

8. The question is whether the evidence of PW-1 should be disbelieved on the ground that the dead body of the deceased was found two days after the incident at some other place. It must be noted here that there is no dispute about the identity of the dead body. In absence of dispute about the identity of the dead body, only on the ground that there was a delay in finding the dead body, the evidence of PW-1 cannot be brushed aside.

9. The evidence of PW-3 (Dr. K.N. Saxena), the Medical Officer who carried out the post mortem, makes it clear that there were fire arm entry wounds on the body of the deceased and there were exit wounds also. Even the injuries on the person of PW-1 have been established by examining a doctor. Only because gun powder was not found on the injuries of PW-1, his testimony cannot be discarded. Moreover, the firing took place from a long distance and, therefore, there was no question of finding traces of gun powder.

10. Once a Court believes ocular testimony of an eyewitness, whose evidence is of sterling quality, the failure to seize the fire arms used for committing the offence recedes to the background.

11. Therefore, we find no error in the view taken by both the Courts that the guilt of the appellant was established beyond a reasonable doubt.

12. We may note here that the age of the appellant on the date of commission of the offence was 18 years 10 months and 27 days. There is no dispute that he has completed actual incarceration for a period of more than 14 years. Therefore, his case deserves consideration for grant of permanent remission under Section 432(1) of the Code of Criminal Procedure, 1973 (for short, "the Cr.PC) or under Section 473(1) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, "the BNSS"). No antecedents of the appellant are brought on record. Moreover, this is a case where investigation took 12 years. Considering the fact that the appellant had just become adult on the date of the incident, his case for permanent remission deserves sympathetic consideration in terms of the applicable policy of the State Government.

13. The learned AAG appearing for the State pointed that, in fact, a proposal for consideration of the case of the appellant under Section 432(1) of the Cr.PC / Section 473(1) of the BNSS has been prepared and is being processed and it is pending at the level of the State Government.

14. The Appeal is dismissed. We, however, direct the State Government to take an appropriate decision on the proposal to grant permanent remission to the appellant as expeditiously as possible

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and, in any event, within a period of two months from today. The State Government shall consider the observations made in this order while considering the proposal.

.....J.
(ABHAY S. OKA)

.....J.
(AHSANUDDIN AMANULLAH)

.....J.
(AUGUSTINE GEORGE MASIH)

NEW DELHI;
SEPTEMBER 05, 2024.

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ITEM NO.101

COURT NO.6

SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO(S). 2474/2023

MASTER ARAKH

Appellant(s)

VERSUS

STATE OF UTTAR PRADESH

Respondent(s)

[TOP OF THE CAUSE LIST]

(IA No. 16293/2019 - EXEMPTION FROM FILING O.T., IA No. 16294/2019 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No. 20250/2019 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES, IA No. 76570/2022 - GRANT OF BAIL AND IA No. 95721/2022 - EXEMPTION FROM FILING O.T.)

Date : 05-09-2024 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ABHAY S. OKA
HON'BLE MR. JUSTICE AHSANUDDIN AMANULLAH
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

For Appellant(s)

Mr. Devvrat, AOR
Ms. Harshita Sharma, Adv.
Ms. Swati Setia, Adv.
Ms. Charu Sangwan, Adv.
Mr. Devesh Kumar Agnihotri, Adv.
Mr. Nitin Jain, Adv.
Dr. Pabitra Pal Choudhary, Adv.

For Respondent(s)

Mr. Ravindra Raizada Sr. Adv, A.A.G.
Mr. Adarsh Upadhyay, AOR
Ms. Pallavi Kumari, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The Appeal is dismissed in terms of the signed order.
Pending applications stand disposed of accordingly.

(ASHISH KONDLE)
COURT MASTER (SH)

(AVGV RAMU)
COURT MASTER (NSH)

[THE SIGNED ORDER IS PLACED ON THE FILE]